

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 752

IN THE MATTER OF:

Served November 1, 1967

Application of WMA Transit)	Application No. 425
Company for Amendment of)	
Certificate of Public Con-)	Docket No. 160
venience and Necessity No. 8.)	

Application of WMA Transit)	Application No. 424
Company for Temporary Authority)	
to Extend its Routes in the)	
District of Columbia from)	
Present Terminal to Farragut)	
Square Area.)	

On October 24, 1967, the Commission issued Order No. 751, in which it (a) set for hearing the application of WMA Transit Company for an amendment to its certificate of public convenience and necessity which would authorize it to provide a through-bus service from the suburban areas of Maryland served by that carrier to a point in the District of Columbia, namely Farragut Square, and (b) granted WMA Transit Company temporary authority to perform such transportation pending determination of the application for permanent authority.

On October 31, 1967, D. C. Transit System, Inc., filed an application for reconsideration of Order No. 751, setting forth eleven (11) grounds as error, and praying that the Commission "reconsider the order and modify it in accordance with this application for reconsideration. . ." (Application for Reconsideration, p. 7). Most of the grounds alleged as error are immaterial and/or inappropriate in view of the

interim nature of Order No. 751. The law authorizing the Commission to issue temporary authority orders is stated in Section 4(d)(3) of the Compact; that law succinctly requires two -- and only two -- salient findings: first, that there is an immediate and urgent need for service to a point or points, and second, that there is no carrier service extant capable of meeting such need.

Order No. 751 clearly reveals that those findings were in fact made. The order details the immediacy and the urgency of the need for the through-bus service. The order went on to recite that "[t]he only carrier presently capable of meeting that need is the carrier now providing service" (Order No. 751, p. 4). That finding contains the corollary conclusion that, without the issuance of temporary authority, there is no carrier service capable of providing the through-bus service. And, in fact, there is none, for neither WMA's nor D. C. Transit's certificates authorize the through-bus service.

Our finding recognizes, moreover, the practicalities of the situation, by continuing the present service rather than having it replaced with a new carrier and a corresponding new service; moreover, while other variations might be suggested, such as interline arrangements, it must be remembered that our action stems from a specific application for temporary authority. The proper place to consider alternatives to the temporary service authorized is in the hearing on the application for permanent authority.

Transit's pleading gives little consideration to the remaining language of Section 4(d)(3), which declares that "the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority. . ." Similar language in other agencies' statutes has been judicially interpreted to convey a broad degree of agency discretion. Order No. 751 clearly spells out the facts utilized by this agency in support of its decision. The application for reconsideration sets forth no facts to challenge or rebut our determinations -- it contains only stark generalizations.

In our opinion, Transit's contentions are without merit. Moreover, many of them fail to meet that degree of specificity

required by our statute (Section 16). For example, Ground No. 8 states that "The Commission erred in finding that the furnishing of service over the proposed route extensions by WMA has had and will have a 'minimal economic impact' upon Transit." The manner in which we erred is certainly not discernable from such a generalized remark.

At the time of the issuance of Order No. 751, the Commission staff was advised that an interline agreement had at that moment been signed by the representatives of D. C. Transit System, Inc., and A. B. & W. Transit Company. Subsequent study of a copy of that agreement revealed that A. B. & W. Transit Company was to pay to D. C. Transit System, Inc. 3.4¢ per revenue mile involved in the "interline service" extending between 14th and Pennsylvania Avenue, N. W., and 17th and K Streets, N. W.; in monetary terms, A. B. & W. Transit Company has estimated that the payment to D. C. Transit System, Inc. under this agreement will not exceed \$1,000 per year. If ~~the same formula were applied to a service extending between~~ 11th and E Streets, N. W. and Farragut Square, considering the fact that three times more buses would be involved than with the A. B. & W. Transit Company, the total reimbursement to D. C. Transit System, Inc., for the service presently under consideration would be roughly \$3,000 per year. This determination only confirms the Commission's finding in Order No. 751 that the service temporarily authorized will have a "minimal economic impact" upon Transit.

In fact, Transit's pleading sets out no matter pertinent to the need for the service or its impact on Transit's operations not already adequately considered and dealt with by the Commission in Order No. 751.

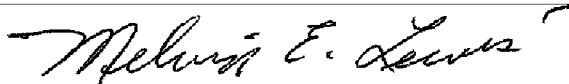
Finally we turn to Transit's reliance upon Section 4(e) of the Compact. The statutory requirements set out therein pertain to applications for permanent authority and are not relevant to a temporary authority proceeding. The function of temporary authority and the procedure and criteria for a grant thereof are entirely distinct from a proceeding involving an application for permanent authority. The two should not be confused. This much can also be said for Transit's

allegations in regard to Section 3 of its franchise. The relevancy and applicability of those laws properly pertain to a proceeding involving an application for permanent authority.

In conclusion, it is to be noted that the Commission granted temporary authority based on the findings and the powers of the Commission under the statute. In so doing, the Commission has avoided the confusion and hardship which would have resulted from a cessation of the service, particularly with the ultimate resolution of the problem in doubt. The temporary authority is only for a limited period and the Commission has indicated that it will expedite the proceedings to assure that an early and permanent solution is determined. Accordingly, we conclude that the application for reconsideration should be denied.

THEREFORE, IT IS ORDERED that the application of D. C. Transit System, Inc., ~~for reconsideration of Order No. 751~~ be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS
Executive Director

HOOKER, Commissioner, not participating.